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THE PART OF THE PEOPLE AND OF THE STATES IN CHOOSING THE PRESIDENT.

BY WALTER L. HAWLEY.

A VERY large majority of the voters in this country believe that they have a constitutional right to help to elect Presidents of the United States by casting their ballots for electors who must obey their order as expressed at the polls. The fact is that the men who made the Constitution of the country evidently did not contemplate the election of Presidents by the people.

The letter of the Constitution makes the State the political unit in national elections, and it was not until 1880, ninety-one years after the election of the first President, that a full and free expression of the choice of the people of all the States of the Union for Chief Executive was recorded at the polls and carried into effect. The result of the popular vote of 1876 was set aside by an Electoral Commission, an act without constitutional authority.

The second section of Article II. of the Constitution of the United States provides as follows:

"Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of the Senators and Representatives to which the State may be entitled in the Congress."

If the framers of the Constitution had intended that these electors should be elected by the people, they might have used the word "elect" in this section instead of "appoint." The men who go through the legal form of electing a President and Vice-President were for many years selected by the Legislatures in a number of States, and in South Carolina the custom was not discontinued until the Civil War. There was no record of a popular vote for President until 1824, and that year, in eight

of the twenty-four States then voting, electors were chosen by the Legislatures.

That the evident intention of the makers of the Constitution was to have Presidents elected by the States acting as political units, rather than by vote of the people, is apparent in the constitutional provision for an election when the vote in the Electoral College is a tie. In that event, the election of a President devolves upon the House of Representatives, each State having one vote; and the Senate, voting separately, elects the Vice-President, the votes of a majority of States constituting an election.

The political possibilities of this constitutional provision seem to prove that the election of Presidents by the people is merely a popular custom, permitted, but not ordered, by the fundamental law of the country. If the Electoral College of 1900 or any subsequent year should fail to elect a President and Vice-President, the election would be thrown into the House of Representatives and the Senate, respectively, and the following political possibility would be presented: One political party might have a majority of Representatives in Congress, yet have a minority representation from more than half the States. In that event, the minority party in the House of Representatives would elect the President, because the votes of South Carolina and Florida would count as much as those of New York and Pennsylvania. The same condition might exist in the Senate, and States represented by one Republican and one Democratic Senator might lose their vote in the selection of a Vice-President, if the two Senators failed to agree upon a candidate.

Under existing political conditions, it is an easy matter for one party to elect only a minority of the Representatives from more than half the States, and yet have a majority of the whole number in the House. In 1898, the State of Mississippi elected seven members of Congress, all of one political party, yet the total vote for all candidates in the seven districts was approximately 27,000; while in the Fourteenth District in the State of New York the successful candidate received 31,399 votes, and the defeated candidate 25,083. In the one New York district, the candidates of the two leading parties received more than twice as many votes as were cast for Congressmen in the State of Mississippi. There are thirty-four Congressional Districts in New York; yet, in the event of the election of a President by the

House of Representatives, the smaller State would be as powerful as the larger, and in the Electoral College Mississippi has nine votes, one-fourth the number of the Empire State. The terms "popular vote" and "majority rule" seem to be misnomers in a political situation where it is possible, in the election of a President, for 27,000 votes to offset 1,200,000. So the individual voter may well hesitate about proclaiming himself a sovereign in a national election.

Apart from the constitutional provision for an Electoral College and the method of counting the votes cast by the members of that body, our method of electing Presidents is one of political custom and precedent, having for all practical purposes the force of law. Very few of our Presidents have received a majority of all the votes cast by the people, and some of those who received the largest majorities of the electoral vote carried just one more than half of the States of the Union. In 1898, McKinley had a majority over all of more than a quarter of a million in the popular vote, a plurality over Bryan of 600,000, a majority of 95 in the Electoral College, and yet he carried only twenty-three of the forty-five States. The triumph of Cleveland in 1892 was classed as a political landslide; but with his large popular and electoral vote he carried only twenty-three States.

In the Electoral College of 1900, there will be 447 votes, and 224 will be necessary to a choice. If one of the candidates for President received the electoral votes of the twelve States of Illinois, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Missouri, New York, Ohio, Pennsylvania, Texas and Georgia, he would have 230 in the College, six more than would be necessary to elect. The other candidate might carry the thirty-three States remaining, and be seven votes short of the number requisite to make him President. The twelve States in this list elect 206 of the 357 members of the House of Representatives, a majority of fifty-five. On ordinary political divisions, the party carrying a State for its electoral ticket would elect a majority of the Congressmen from that State. Therefore, in the event of the failure of the Electoral College to elect a President, the party carrying a majority of the States, including all the small ones, would control the election in the House of Representatives, and elect the candidate who had polled a minority of the popular vote.

There is no law, save the binding force of custom and party loyalty, to compel a Presidential elector to cast his vote for the candidate of his own party, and no constitutional or statutory provisions for going behind the returns of the Electoral College, no matter what the popular vote might be.

Prior to 1800 candidates for President and Vice-President were not nominated by conventions or any other method; a majority of the electors were selected by State Legislatures, and as a rule they were left free to vote for any man regarded as a leader of the party to which they belonged. Beginning in 1800, the members of Congress representing the two political parties nominated candidates for President and Vice-President in caucus, the Constitution having been amended to provide for separate voting for each in the Electoral College.

This system was continued until 1820, when it was abandoned because there was no opposition to the re-election of President Monroe. In that year the popular interest in voting for President, even indirectly, seems to have reached a low ebb, because in nine of the twenty-three States electors were chosen by the Legislatures. The States so acting were Alabama, Connecticut, Delaware, Georgia, Indiana, Louisiana, New York, South Carolina and Vermont. In 1824 an attempt to revive nominations by caucus of Congressmen failed, and four candidates were voted for in the Electoral College. Jackson received 99 electoral votes, Adams 84, Crawford 41, and Clay 37. There was no election for President, although the Electoral College elected John C. Calhoun Vice-President. In eight States the electors were chosen by the Legislatures, and the popular vote in the other States as recorded was, Jackson, 155,872; Adams, 105,321; Crawford, 44,282, and Clay, 46,587. Jackson, the leading candidate of the Democrats, had a plurality of both the popular and electoral vote, but, for the second time in the history of the Republic, the election of a President was thrown into the House of Representatives. The Democrats were in a majority in both houses of Congress at the time; but each State had only one vote, and thirteen of the twenty-four States voted for John Quincy Adams. Seven States voted for Jackson, and four for Crawford. That election established the fact that, under our Constitution, it is possible for a minority party to elect a President of the Republic, when the election goes to the House of Representatives.

One of the results of the election of 1824 was to arouse popular interest in national contests; and, four years later, Presidential Electors were appointed by the Legislatures in only three States—Delaware, New York and South Carolina. In 1828, for the first and last time, party candidates for President and Vice-President were nominated by party caucuses in the Legislatures of the States. The total popular vote recorded in 1828, in twenty-one of the twenty-four States, was 1,156,328, an increase of more than 80,000 over the vote of 1824, showing that the voters of the country had become aroused to the possibility of defeating the will of the majority, by throwing the election of a President into the House of Representatives.

The political parties began effective organization by States and counties during President Jackson's first term, but the agitation against the Masonic order was responsible for the first national political convention held in this country to nominate candidates for President and Vice-President. The Anti-Masonic party, as the agitators called themselves, held a convention in Baltimore on September 26th, 1831, and nominated William Wirt, of Maryland, for President, and Amos Ellmaker, of Pennsylvania, for Vice-President. The National Republican, or Whig, party followed with a convention, also held in Baltimore, on December 12th, 1831, and nominated Henry Clay for President.

The first Democratic National Convention met in Baltimore on March 22d, 1832, and renominated Andrew Jackson for President, and nominated Martin Van Buren for Vice-President. That convention adopted the first national political platform, which was in the form of three resolutions declaring the party in favor of protection for American industries, internal improvements at the expense of the general government, and a civil service in Federal employment. Electors were elected by vote of the people that year in every State except South Carolina, but the comparatively new political privilege was not extensively exercised. The total recorded vote for President was less than 100,000 in excess of the vote of 1828, although New York and Delaware were added to the list of States selecting their electors by ballot. The popular vote for William Wirt, the Anti-Masonic candidate, was so small that no official record of it remains, although he received seven votes in the Electoral College.

The Whig party held no convention in 1836, but through State

organizations, conventions and mass meetings nominated three candidates for President and three for Vice-President. The number of States had increased to twenty-six; and all of them, except South Carolina, elected members of the Electoral College by ballot. The total popular vote recorded slightly exceeded 1,500,000, of which Van Buren (Democrat) received 761,549, and W. H. Harrison (Whig) 736,656. In the Electoral College the former had 170 votes to 73 for Harrison.

National conventions, party nominations and direct vote for Electors had become the established rule by 1840, and the Tippecanoe campaign of that year did more than any previous event to arouse the interest of the voters in candidates and general issues. The popular vote went up at a bound, nearly 2,500,000 ballots being counted, with South Carolina alone clinging to the old system of Legislature electing Presidential Electors. While the plurality of Harrison over Van Buren at the polls was less than 150,000, he had 234 votes in the Electoral College to 60 for his opponent. Four years later, the increase in the popular vote was trifling, the total number of ballots recorded being less than 2,700,000. This vote did not pass the three-million mark in 1848, although four new States had been added to the Union and there were three regular candidates for President. The Free Soil party polled 291,263 votes for Martin Van Buren, but failed to carry a State or capture an electoral vote. In 1852, less than 3,200,000 votes were recorded, with thirty-one States in the Union. With a plurality of 214,000 in the popular vote, Franklin Pierce received 254 of the 296 electoral votes.

The popular vote in 1856 exceeded 4,000,000, and Buchanan's plurality over Fremont was nearly half a million, but he was in a minority of nearly 400,000 of the total number of votes cast. In the election of 1860, Lincoln received 1,865,913 votes to 2,814,968 cast for his opponents, but he had 180 votes in the Electoral College to 123 cast for Breckinridge, Bell and Douglas. The Legislature of South Carolina elected the Presidential Electors from that State for the last time, and with that election the old plan disappeared from the political system of the country.

Because of the conditions that prevailed in the South in 1868 and 1872, the popular vote of those years cannot be accepted as fully expressing the political views of all the voters of the Union. The vote of 1876 for Presidential Electors was, therefore, the first

time in the history of the country that the voters of every State, without the intervention of a Legislature, and free of military control or intimidation, cast their ballots for electors, and in that way expressed directly their choice for Chief Magistrate of the Nation. The recorded vote was 4,284,757 for Samuel J. Tilden, and 4,127,848 for all other candidates. Although Tilden had a majority over all on the face of the returns, the vote was set aside in three States, he was counted out by the Electoral Commission, and, as a matter of technical accuracy, it was not until 1880 that the voters of all the States expressed directly at the polls their choice for President and that their decision prevailed. After ninety-one years of effort to overcome legally the evident intent of the Constitution, and to bring about the election of Presidents by a system closely approaching a direct vote of the people, the first President so elected, James A. Garfield, was 300,000 votes short of a majority over all, the moral of which may be that, in republics, majorities do not always rule.

The love of system and order that is one of the dominant traits of the Anglo-Saxon is in a large measure the sustaining force of the Republic, but in even greater degree it has created an unwritten law of custom that compels the election of Presidents in an orderly way, that permits a reasonably fair expression of the wishes of the people. As a matter of written law, Presidential Electors, when they have received their certificate of election, are free to vote for their personal choice for President and Vice-President. That they do vote for the nominees of their respective parties is merely a matter of personal honor and party loyalty. In the early days of the Republic, when party lines were loosely drawn and there were no nominating conventions, Electors did sometimes vote for men who were not the accepted candidates of their party, but never in numbers sufficient to change the anticipated result in the Electoral College.

From the days when the voters were divided into organized political parties, and candidates and Electors were nominated by conventions, there is no record of an Elector having betrayed the trust reposed in him. In the event of a close election, however, the Electors of one State might easily change the result of the popular ballot, and the Constitution and laws of the country provide no legal method by which such a breach of party loyalty could be set aside. The man receiving a majority of the votes

of the Electoral College, if they are cast and recorded as prescribed by the Constitution, is the legally elected President of the Union, even if two-thirds of all the voters in the country had cast their ballots for another candidate.

The present system of electing a President has never been defended as perfect, or entirely satisfactory to the people; but in practice it has worked so well that changes are rarely suggested, and it is not probable that a new plan will be tried until political corruption has invaded the Electoral College and the action of the voters has been set aside by unfair and illegal methods. The unwritten law of custom is apparently stronger than the Constitution in our system of government, or at least in our plan of electing Presidents. The members of the Electoral College have never failed to obey the mandate of their party; but the recorded will of the voters and the College itself were set aside in 1876, yet peace prevailed and government by the people survived.

WALTER L. HAWLEY.